

**MINUTES
of the
FIRST MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 24, 2015
Room 321, State Capitol
Santa Fe**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative John L. Zimmerman, co-chair, on June 24, 2015 at 9:49 a.m. in Room 321 of the State Capitol in Santa Fe.

Present

Sen. Cisco McSorley, Co-Chair
Rep. John L. Zimmerman, Co-Chair
Rep. Monica Youngblood

Absent

Rep. Gail Chasey
Sen. John C. Ryan
Sen. John Arthur Smith

Advisory Members

Rep. Jim R. Trujillo**

Sen. Linda M. Lopez
Sen. Mary Kay Papen
Rep. Patricio Ruiloba
Rep. Don L. Tripp

**Representative Trujillo was appointed as a voting member for this meeting.

Staff

Caela Baker, Staff Attorney, Legislative Council Service (LCS)
Douglas Carver, Staff Attorney, LCS

Guest Legislator

Sen. Nancy Rodriguez

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, June 24

Welcome and Introduction

After welcoming those in attendance to the meeting and after introductions, Representative Zimmerman announced that Representative Trujillo would be a voting member of the committee for the meeting in order to establish a quorum.

History of the Master Settlement Agreement in New Mexico

Ari Biernoff, assistant attorney general, Office of the Attorney General (AGO); Phillip M. Bachicha, special projects coordinator, Litigation Division, AGO; and Jennifer Van Wiel, paralegal, Litigation Division, AGO, made a presentation on the Master Settlement Agreement (MSA). Mr. Biernoff discussed how the major tobacco companies signed the MSA in 1998 with all states (and the District of Columbia) but four (Florida, Minnesota, Mississippi and Texas). The companies agreed to certain restrictions on their sales and marketing practices and were required to open certain of their corporate records to examination. In addition, the companies agreed to make payments in perpetuity to the states that are part of the MSA, though, Mr. Biernoff noted, the payments cover less than 10 percent of the actual health care costs that tobacco use has caused the states. The money from the companies comes from a percentage of annual national cigarette sales and is divided proportionally between the signatories of the MSA based on the percentage of sales when the agreement was signed in 1998. New Mexico receives 0.6 percent of the total money pool.

The signatory states to the MSA have obligations as well. They must adopt certain regulations for tobacco companies that were not party to the MSA, companies known as non-participating manufacturers (NPMs). These regulations include money that must be paid into an escrow account by the NPMs, which money is intended to satisfy any judgments against these companies were they to be sued in the future. Mr. Biernoff discussed some of the details of the escrow account. Mr. Bachicha gave an overview of the amounts that New Mexico has received as part of the MSA — New Mexico has received roughly \$628 million since payments started in 1999.

Mr. Biernoff informed the members of the committee that the AGO is not involved with allocating money from the MSA, but it is concerned with enforcement efforts. The AGO works closely with the Taxation and Revenue Department (TRD) to ensure that cigarette sales are tracked accurately. Mr. Bachicha discussed the process for companies to become certified to sell tobacco products in the state, and Ms. Van Wiel discussed the auditing process the AGO undertakes to ensure that the records that are provided to the state are accurate and that the amounts paid into the escrow account are valid.

Mr. Biernoff then discussed the litigation that is ongoing concerning past payments. If the companies that signed the MSA believe that a state signatory is not holding up its end of the agreement, the amount required to be paid in a given year can be challenged. The MSA requires challenges concerning annual payments to be decided by an arbitrator. In 2013, the arbitrator

reduced the payments made to New Mexico for 2003 by some \$12 million to \$15 million. New Mexico is challenging the arbitrator's decision. The payments for 2004 are now under review. Mr. Biernoff discussed with members of the committee the long delays in coming to decisions on the appropriateness of past payments, such as the 10-year lag between the 2003 payment and the 2013 determination that New Mexico's amount should be reduced. He opined that the AGO believes that the arbitrator used criteria to determine a state's compliance that were not contemplated in the MSA, which is the basis of the pending court challenge to the arbitrator's decision. He said it appears that every year's payment from 2003 will be subject to challenge. He acknowledged that New Mexico has learned a great deal in the years since 2003 and that the state is now far better in complying with the MSA.

Members of the committee asked Mr. Biernoff for further details concerning the NPM escrow account and questioned him about the ability of the state to access those funds. Mr. Bachicha informed the committee of the coordination on these matters on the part of the attorneys general of the participating states. There was further discussion with members of the committee concerning the staffing levels of investigators for the TRD and whether it might be possible to have the arbitrator review past years en masse, rather than year-by-year. Mr. Biernoff also discussed the improvements in getting NPMs to comply versus 10 years ago.

Post-Session Update: Tobacco Settlement Permanent and Program Funds

Peter van Moorsel, chief economist, Legislative Finance Committee, gave the committee an update on the Tobacco Settlement Permanent Fund and Tobacco Settlement Program Fund Program, working his way through a handout provided to the committee. He noted that the fiscal year (FY) 2013 payment was \$39.3 million, but the FY 2014 payment was only \$21.2 million due to a reduction required by the arbitrator's decision about New Mexico's enforcement of MSA provisions in 2003. There have been some corrections and challenges to the FY 2015 payment, which was initially \$35 million. The estimated FY 2016 payment is \$40 million, but those numbers will be revised in the autumn.

Mr. van Moorsel discussed the required legislation that was passed during the 2015 legislature to spend 50 percent of the tobacco MSA payment. He also discussed transfers from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund and language in the general appropriation act regarding such transfers. He also discussed the gains and losses from the State Investment Council's investment of the Tobacco Settlement Permanent Fund. He noted that this fund is a significant contributor to general fund reserves.

Review and Update of the 2015 Interim Work Plan and Meeting Schedule

Members of the committee discussed the work plan for the 2015 interim and decided on its meeting locations and dates for meetings. On a motion made and seconded, the committee approved the 2015 interim work plan.

Adjournment

There being no further business before the committee, the TSROC adjourned at 12:00 noon.